

Honorable John C. Coughenour

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

The United States of America, by and through John McKay, United States Attorney for the Western District of Washington, and Robert P. Brouillard, Assistant United States Attorney for said District, hereby responds to the Plaintiffs' Motion to Compel in the above-captioned case.

By their Motion to Compel, plaintiffs seek an order compelling the United States to disclose 1) the identities of those Food Stamp recipients whose accounts were involved in the acts of Food Stamp trafficking at issue in this case and 2) the standards employed by the Food and Nutrition Service, U.S. Department of Agriculture, to determine whether particular transactions evidence the trafficking of Food Stamps.

1 1. Standards Employed by FNS to Determine Trafficking.

2 Addressing the second item first, the Food Stamp Program is run by the Food and
 3 Nutrition Service (“FNS”) of the U.S. Department of Agriculture. In investigating Food Stamp
 4 trafficking, the FNS analyses Electronic Benefit Transfers looking for “a pattern of irregular
 5 and/or inexplicable transactions recorded by the EBT system which indicate[s] to knowledgeable
 6 reviewers that [] violations were likely occurring.” See Kahin v. United States, 101 F.Supp.2d
 7 1299, 1300 (S.D. Cal. 2000). Such patterns were found in this case. The United States has
 8 provided plaintiffs a copy of its report of investigation (“ALERT Investigation Explanatory
 9 Notes”) with all available information on the methodology of FNS’ investigation and the bases
 10 for its findings. We have informed plaintiffs that any additional information can best be
 11 discovered by deposing Food Stamp Program Specialist Fred Conn, the investigating officer.

12 Plaintiffs are scheduled to depose Mr. Conn on March 21, 2006. We believe that the
 13 deposition of Mr. Conn will provide the plaintiffs with any available information regarding the
 14 standards employed by FNS to determine whether particular transactions evidence the trafficking
 15 of Food Stamps. Other than the depositions of persons with knowledge of Food Stamp
 16 trafficking investigations, the United States is not aware of any other source of the information
 17 the plaintiffs seek.

18 2. Disclosure of Identifying Information of Food Stamp Recipients.

19 Regarding the identities of those Food Stamp recipients whose accounts were involved in
 20 the acts of Food Stamp trafficking, the undersigned has been informed on this date that the State
 21 of Washington is the custodian of that information. Therefore, the plaintiffs’ request for that
 22 information must be directed to the State of Washington.

23 Furthermore, we submit that that information, if held by the United States, would be
 24 protected by the Privacy Act and is not relevant to this case. The plaintiffs were disqualified
 25 from participation in the Food Stamp Program based on evidence obtained through the Food
 26 Stamp EBT system. See Complaint at ¶ 10. Reliance on such evidence is explicitly recognized
 27 under 7 U.S.C. § 2021(a). Kahin v. United States, 101 F.Supp.2d at 1304. Contrary to the
 28 implications of paragraph 20 of the Complaint, the United States is not required to “corroborate”

1 its findings with evidence obtained from Food Stamp recipients. Accordingly, the information
2 that the plaintiffs seek from such recipients is not relevant. Because it clearly is covered by the
3 Privacy Act to the extent it can be said to be in the possession of the United States, it is not
4 subject to disclosure.

5 DATED this 6th day of March, 2006.

6 Respectfully submitted,

7 JOHN McKAY
8 United States Attorney

9 s/ Robert P. Brouillard
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that she is an employee in the Office of the United States Attorney for the Western District of Washington and is a person of such age and discretion as to be competent to serve papers.

That, on March 6, 2006, she electronically filed the foregoing document(s); *United States' Response To Plaintiffs' Motion To Compel*, with the Clerk of Court, using the CM/ECF system, which will send notification of such filing to the following CM/ECF participants:

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I further certify that on the same date I caused to be faxed the above documents to the following CM/ECF participants:

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DATED this 6th day of March, 2006.

s/ Lisa M. Lindquist
LISA M. LINDQUIST
Legal Assistant
United States Attorney's Office